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ABSTRACT

This report presents an analysis of the results of a survey of State Directors of Special Education on their state mediation systems. It notes requirements under the 1997 amendments to the Individuals with Disabilities Education Act (IDEA) that a mediation process must be available to parents desiring its use in conflict resolution. This report presents a narrative analysis of the answer to each of the survey's seven questions as well as a chart comparing states (and the Department of Defense school system and the Palau system) on the following parameters: existence of a mediation system prior to IDEA 97; whether qualifications are established; the provision of training and ongoing support; funding source; agency responsible for mediation; whether a meeting is required if mediation is refused; and whether local education agencies have established a meeting rule. (DB)

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Quick Turn Around Forum. Issue: State Mediation Systems.

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EC 306986

Quick Turn Around Forum

QTA - a brief analysis of a critical issue in special education

Issue: State Mediation Systems **Date:** October 1998

Purpose

This report is a brief analysis of the results of a survey of State Directors of Special Education on their state mediation systems. It was conducted as a follow-up to previous Project FORUM documents on this topic (Ahearn, 1997, Ahearn, 1994, Schrag, 1996). Responses to selected items of the survey are summarized in the attached table.

Background

Although not required prior to the passage of the 1997 amendments to the Individuals with Disabilities Education Act (IDEA), mediation systems were already in place to assist families and schools in the resolution of disputes in over three-quarters of the states (Ahearn, 1994). Section 1415(e) of IDEA '97 now requires state and local education agencies (SEAs, LEAs) to ensure that procedures are established and implemented to allow disputes between parents and schools to be resolved through a mediation process which must be available at least whenever a hearing is requested. Among the specific requirements of this new section are the following:

- The mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- The state must maintain a list of individuals who are qualified mediators and are knowledgeable in laws and regulations relating to the provision of special education.
- An SEA or LEA may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center, a community parent center or an appropriate alternative dispute resolution entity which will encourage the use of mediation, and explain the benefits and the process of mediation to parents.
- The state shall bear the cost of the mediation process, including the costs of meetings described above.

It is important to note that the law does not mandate mediation—it requires that mediation be voluntary, and that it not be used to deny or delay a parents right to a due process hearing or any other rights.

Mediation Survey Responses

All fifty states plus two non-state jurisdictions (Palau and the Department of Defense Schools) responded to the mediation survey. Responses are summarized under each of the eight items on the survey.

Item 1 - Date mediation system implemented by the state.

The 52 responses to this item yielded the following pattern of mediation system implementation:

- 6 between 1975 and 1979
- 10 between 1980 and 1985
- 13 between 1986 and 1990, and
- 15 between 1991 and 1996
- 8 no mediation system before 1997

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Item 2 - Specific qualifications established for mediators.

A majority of respondents reported that a specific set of qualifications have been established for an individual to serve as a mediator—in only 11 states is this not the case. The most common qualification is the completion of a specified number of training hours in mediation and in special education and related services. The number of training hours required ranges from 16 to 40 hours, with the average being 25 hours. In most states, training is provided by the state's department of education. The most extensive requirements are in Texas and Kentucky. Texas requires mediators to have 40 hours of training, 2 years of experience, and a masters degree with an emphasis in special education, education, counseling, or a related area; Kentucky requires a bachelor's degree and 2 years of professional experience as well as knowledge of special education.

Item 3 - Ongoing training and support for mediators.

One hundred percent of the survey respondents reported that they provide mediators with initial training and ongoing support. Training ranges from one to five days in length conducted annually, in addition to monthly or quarterly meetings. Training is designed to extend and refine mediator skills, as well as an opportunity to discuss emerging issues in special education mediation. Some states also require mediators to earn continuing education credits.

Item 4 - Funding sources used to pay mediators.

Almost all respondents reported using IDEA Part B funds to pay mediators. Four use only state funds, while six states use a combination of sources including IDEA Part C funds, LEA funds and CSPD funds in addition to Part B and/or state funds to support their mediation systems. The DODEA is unique—it is supported entirely by Department of Defense funds.

Item 5 - Agency responsible for managing the state mediation process.

In most of the states, the mediation process is managed by the SEA, often in a division of special education or special services. Seven states manage their mediation process jointly with another state agency, usually a conflict resolution office or a division of the state's legal system. For example, the Michigan mediation process is run by the Michigan Supreme Court, State Court Administrative Office. Some joint management arrangements are based on informal coordination, while others are formalized in interagency agreements.

Five states reported providing mediation through contracts with non-SEA entities. They are: a) California with the McGeorge School of Law; b) Delaware with the University of Delaware Office of Conflict Resolution; c) Georgia with the Justice Center of Atlanta; d) New York with the State Dispute Resolution Association; and, e) Washington with Sound Options Mediation Systems.

Item 6 - Optional SEA policy that requires parents who choose not to use the mediation process to meet with a disinterested party. (New IDEA 97 provision).

Only two of the 52 respondents have enacted this requirement—Arkansas and California. Massachusetts commented that they see such meetings as a way to help parents understand mediation in order to make an informed choice about whether to use it. New York commented that current practice is for districts to urge, recommend, advise, or request a parent to meet with a disinterested/neutral party. Others encourage this practice, although it is not required. Nebraska commented that it was their experience that the LEAs are two to seven times more likely to refuse to mediate than parents.

Item 7 - Optional LEA policy that requires parents who choose not to use the mediation process to meet with a disinterested party. (New IDEA 97 provision)

Only California indicated awareness of an LEA that has established a policy requiring a parent

who refused mediation to meet with a disinterested party. The responses of states to questions 6 and 7 indicate that such a mandate has not been a part of mediation systems to date. It remains to be seen whether states will use this dispute resolution tool in the future.

Item 8 - Additional comments.

SEA respondents added comments on a variety of points related to mediation systems:

- Many made positive remarks on their perception of the value of mediation, and shared data on their rates of success in reaching settlement agreements.
- California and South Dakota underscored the need for effective and ongoing mediator training, especially due to staff turnover.
- Nebraska emphasized the need to collect uniform, relevant data across the country on mediation, hearings, outcomes, complaints and the costs involved in each.
- The Tennessee respondent suggested that, although participation in the process is voluntary, a mediation agreement should be binding.
- The Department of Defense noted the importance of training all educators in mediation skills that can be used in daily conflict resolution and avoid the need for formal mediation.
- The New Mexico SEA staff stated that the real sources of conflict between parents and schools most often have more to do with attitudes, communications and emotions than with regulatory compliance. Formal adjudication, therefore, rarely addresses the real issues. They believe that third party assistance should be made available as early as possible to prevent disagreements from escalating into formal disputes.
- Florida noted that many of their mediators are employees of LEAs, and expressed hope that the final IDEA Regulations will not prohibit the assigning of those individuals as mediators.
- New Hampshire schedules a mediation session automatically as soon as a due process hearing is requested and, if mediation is rejected, a "pre-hearing conference" is held in lieu of the mediation session.

Additional materials provided by respondents:

Fourteen states provided copies of brief documents such as flyers that they use to acquaint people with their mediation systems. In addition, the following substantive materials were sent with state survey responses:

Massachusetts:

- *When Parents and Educators Do Not Agree: Using Mediation to Resolve Conflicts About Special Education.*
- Description of Advisory Opinion Process: When a due process hearing is requested, both parties can agree to this process whereby each side gets one hour to present its case before a Hearing Officer using documents and witnesses. The Hearing Officer then issues a brief (2-3 sentences) non-binding advisory opinion that parties may use this to assess their respective positions and decide on next steps.

Nebraska:

- *Office of Dispute Resolution Manual of Standards and Ethics for Center Mediators, Directors and Staff.*
- Copy of interagency agreement between the Department of Education and the Office of Dispute Resolution.
- *Nebraska Mediation Option: Four Year Comparison 1994-98.*

Nevada: *Nevada Mediation System for Early Intervention and Special Education*, a joint publication of the Departments of Education and Human Resources.

Oklahoma: *Supreme Court of Oklahoma Mediation Training and Resources Manual.*

Pennsylvania: Guidelines: Special Education Mediation Services.

References

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Ahearn, E. M. (1997). *Due process hearings: An update.* Alexandria, VA: National Association of State Directors of Special Education.

Schrag, J. (1996). *Mediation and Other Alternative Dispute Resolution Procedures in Special Education.* Alexandria, VA: National Association of State Directors of Special Education.

State	Mediation System Prior to IDEA '97	Established Qualifications	Training/ Ongoing Support	Funding Source	Responsible for Mediation	Require Meeting if Mediation is Refused	LEA(s) Have Established Meeting Rule
AK	No	Yes	Yes	IDEA Part B & Part C funds	Office of Special Education - private contractor	No	No
AL	Yes - 1977	No	Yes	IDEA Part B funds	Special Education Services	No	No
AR	Yes - 1978	No	Yes - workshops on conflict resolution	IDEA Part B funds	Department of Education Special Education	Yes	No
AZ	Yes - 1988	Yes	Yes - training and updates	IDEA Part B funds & Other	Department of Education Exceptional Student Services	No	No
CA	Yes - 1980	Yes - now under review	Yes - one day annually	IDEA Part B funds	Department Of Education - under contract with Mc George School of Law	Yes	Yes
CO	Yes - 1993	Yes - 40+ hrs training	Yes - quarterly meetings	IDEA Part B funds	Department of Education - Special Education Unit	No	No
CT	Yes - 1975	Yes	Yes	NA	Department of Education - Bureau of Special Education And Pupil Services	No	No
DE	Yes - 1994	Yes	Yes - under proposed contract	Part B funds	Department of Education - under contract with the University of Delaware Office of Conflict Resolution	No	No
FL	Yes - 1992	Yes - certified by Justice Center of Atlanta (JCA)	Annual training by JCA	IDEA Part B funds	Department of Education - Bureau of Instructional Support and Community Services	No	No
GA	Yes - 1981	Yes - certified by Justice Center of Atlanta (JCA)	Yes - by JCA	IDEA Part B funds	Department of Education - under contract with JCA	No	No
HI	Yes - 1989	Yes - certified by Neighborhood Justice Center (NJC)	Yes - by NJC	IDEA Part B funds	Department of Education - under contract with NJC	No	NA (single system state)

State	Mediation System Prior to IDEA '97	Established Qualifications	Training/ Ongoing Support	Funding Source	Responsible for Mediation	Require Meeting if Mediation is Refused	LEA(s) Have Established Meeting Rule
ID	Yes - 1989	No	Yes - refresher training	IDEA Part B funds	Department of Education Bureau of Special Education	No	No
IA	Yes - 1976	No - use IHE and IA Peace Institute staff	Yes - by IA Peace Institute and attend LRP conference	IDEA Part B funds	Department of Education Bureau of Chn., Fam. & Community Services	No	No
IL	Yes - 1982	No	Yes - 3 day training and meetings	IDEA Part B funds	State Board of Education - Division of Compliance	No	No
IN	Yes - 1989	Yes	Yes - annual 2 day training	IDEA Part B funds	Department of Education - Div. of Special Education	No	No
KS	No	Yes	Yes	IDEA Part B funds	Department of Education - Student Support Services	No	No
KY	Yes - 1986	Yes - BA plus 2 yrs. experience	Yes - by JCA and state staff	State funds	Department of Education - Div. Of Exceptional Children's Services	No	No
LA	Yes - 1989	Yes	Yes	IDEA Part B funds	Department of Education - Div of Special Populations	No	No
ME	Yes - 1984	Yes - areas of knowledge	Yes - monthly meetings	NA	Department of Education- Div. Of Special Services	No	No
MA	Yes - 1975	Yes	Yes - monthly meetings and training by professional orgs.	IDEA Part B funds	Department of Education - Bureau of Special Education Appeals	No	No
MD	Yes - 1996	Yes	Yes - use internal and external sources	State funds and IDEA Part B funds	MD Office of Administrative Hearings with the Department of Education	No	No
MI	Yes - 1986	Yes - 40 Hr. of reg. & advanced training, inservice, internship, & experience	Yes - annual in-service	IDEA Part B funds	MI Supreme Court State Court Administrative Office	No	No
MS	No	Yes - will be part of new system	Yes	IDEA Part B funds	Department of Education Office of Special Education	No	No

State	Mediation System Prior to IDEA '97	Established Qualifications	Training/ Ongoing Support	Funding Source	Responsible for Mediation	Require Meeting if Mediation is Refused	LEA(s) Have Established Meeting Rule
MN	Yes - 1992	Yes - by contractor	Yes - annual training	IDEA Part B funds	Department of Children, Family & Learning under contract with MN Bureau for Mediation Services	No	No
MO	Yes - 1996	Yes - by Department or 16 hrs. elsewhere	Yes - initial and refresher courses	IDEA Part B funds	Department of Education - Legal Counsel Off. Special Education	No	No
MT	Yes -1994	No	No	State funds	Legal Services Division	No	No
NE	Yes - 1994	Yes - certif. by NE Office of Dispute Resolution	Yes - continuing Education credits, annual review and training	IDEA Part B & Part C funds	Interagency agreement - Department of Education & NE Office of Dispute Resolution	No	No
NV	Yes - 1987	Yes - Department course	Yes - training and mentoring	IDEA Part B funds	Department of Education - Education Equity Team	No	No
NH	Yes - 1982	Yes - training by Department	Yes	IDEA Part B funds	Department of Education	No	No
NJ	Yes - 1980	Yes - state employees trained by JCA	Yes - by JCA	IDEA Part B funds	Department of Education Office of Special Education Programs	No	No
NM	No	Yes - 32+ hrs training & experience	Yes - advanced education training and periodic refresher training	IDEA Part B funds	Department of Education - Special Education Office	No	No
NY	Yes - 1995	Yes - 25 hr. course by Unified Court System Certified Trainer-experience	6 hrs. annual continuing education	State funds	Department of Ed -under contract with the NY State Dispute Resolution Assn.	No	No
NC	No (new state law 1998)	Yes - trained by NC Dispute Resol.Network	Yes - in Special Education	IDEA Part B funds	Admin. Law Judges through hearing process and state mediators	No	No
ND	Yes - 1989	Yes - trained by Academy of Family Mediators	Yes - refresher courses	IDEA Part B funds	Department of Pub. Instruction Office of Special Education	No	No

State	Mediation System Prior to IDEA '97	Established Qualifications	Training/ Ongoing Support	Funding Source	Responsible for Mediation	Require Meeting if Mediation is Refused	LEA(s) Have Established Meeting Rule
OH	Yes - 1983	No	Yes - training and mentoring	IDEA Part B funds	Department of Special Education	No	No
OK	Yes - 1993	Yes - certified by Admin. Off. of the Courts	Yes	State funds & IDEA Part B funds (Mediators are volunteers)	Admin. Office of the Courts Alternative Dispute Resolution System	No	No
OR	Yes - 1983	No (in development)	Yes - annual training	State, IDEA Part B, and LEA funds	Department of Special Education	No (in development)	No
PA	Yes - 1988	Yes - certified by Justice Center of Atlanta (JCA)	Yes - 2 days annually	IDEA Part B funds	Special Education Mediation Service - Instructional Support System of PA	No	No
RI	Yes - 1994	No	Yes - general training in policy	IDEA Part B funds	Department of Special Ed	No	No
SC	Yes - 1993	Yes	Yes	IDEA Part B funds	Office of Programs for Exceptional Chn.	No	No
SD	Yes - 1990	No	Yes - through JCA	IDEA Part B funds	State Office	No	No
TN	Yes - 1988	Yes - training and knowledge in mediation	Yes - 40 hrs. per year on Special Education	IDEA Part B funds	Legal Division	No	No
TX	Yes - 1984	Yes - Masters in Education, 40 hrs. mediation training, 2 yrs. experience	Yes - quarterly meetings + 1 day Special ed training	IDEA Part B funds	Special Education Unit - Complaints Mgt. Div	No	No
UT	Yes - 1993	No	Yes - in-service training	State funds	Dep't of Special Education	No (in development)	No
VT	Yes - 1989	Yes - formal training	Yes - one annual training	State funds	Department of Education Legal Office	No	No
VA	No	Yes (proposed)	Yes (proposed)	IDEA Part B funds	Department of Special Ed and Student Services	No	No

State	Mediation System Prior to IDEA '97	Established Qualifications	Training/ Ongoing Support	Funding Source	Responsible for Mediation	Require Meeting if Mediation is Refused	LEA(s) Have Established Meeting Rule
WA	Yes - 1994	Use mediators trained for the State Dispute Resolution System	Dep't of Education did initial training in Special Education and mediators must attend update twice a year	IDEA Part B funds	Dep't of Education under contract with Sound Options Mediation System	No	No
WI	No (state law passed 12/97)	No (only "appropriate skills and knowledge")	Yes - one day annually	IDEA Part B funds	Department of Education (to shift to another agency)	No	No
WV	No	No - will be put into regs when revised	No	IDEA Part B funds	Department of Special Education	No	No
WY	Yes - 1976	No	Yes - annual training	IDEA Part B funds	Department of Special Education Programs	No (will be put in new regs)	No
Non-State Jurisdictions							
DOD*	Yes - 1981	Yes - by JCA or Hearings Appeals	Yes	Other - Department of Defense funds	Special Education coordinators - area & HQ	No	No
PW**	Yes - 1992	Yes	Yes - workshops in Special Education	IDEA Part B funds	Palau Parent Network	No	No

* Department of Defense Education Activity
** Palau

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